

Russian Federation

The right to conscientious objection to military service

Introduction

Military service is compulsory in Russia for men aged between 18 and 27. There is no law on a civilian alternative to military service, which places any conscientious objector under the threat of imprisonment. Amnesty International considers all imprisoned conscientious objectors in Russia as prisoners of conscience and campaigns for their immediate and unconditional release.

Conscientious objection to military service is recognized by the United Nations Commission on Human Rights as a legitimate exercise of the right to freedom of thought, conscience and religion. This right is also recognized in the Russian Constitution. However, parliament has still not introduced the necessary enabling legislation, or amended the Criminal Code to reflect this constitutional provision, and young men continue to risk imprisonment for refusing military service on conscientious grounds. The attempt on 8 December 1995 to pass a law on alternative service resulted in the majority of deputies in the State Duma (lower house of parliament) voting against it. However, a law could be implemented by Presidential decree.

Amnesty International is urging the Russian President and the parliament to ensure that the constitutional right to conscientious objection is made a viable right, without further delay, through legislation creating an alternative civilian service of non-punitive length.

A number of conscripts deserted their military units during the armed conflict in the Chechen Republic to avoid further participation in combat operations. They were not given the choice to exercise their right to conscientious objection and criminal charges were initiated in connection with their desertion.

Historical background

In 1874 an exemption from military service was granted by the Tsar's government to members of religious pacifist communities, mainly Mennonites. The same year the Rules concerning Military Service specified that Mennonites, who according to their beliefs would not even take up arms to defend their own lives, should instead have the right to serve in fire-fighting brigades, in naval workshops, and in "special mobile forestry teams, employed to develop wood areas in the south of the empire". In the beginning of the century the Mennonites were joined in refusing to serve as soldiers by Evangelical

Christians, Baptists, Seventh Day Adventists, Pentecostals, and the indigenous Dukhobor sect and Tolstoyans.¹

A Bolshevik government decree of 22 April 1918 “On obligatory training in the military arts” permitted those whose religious convictions did not allow them to carry arms to fulfil only those obligations that did not involve the use of weapons.

In 1919 Soviet Russia became one of the first countries in the 20th century world to recognize and to provide for the right to conscientious objection to military service, together with Great Britain (1916) and Denmark (1917), which had also passed similar legislation.

On 4 January 1919, when the Civil War was at its height, the Soviet of People’s Commissars (Sovnarkom) issued a decree on exemption from military service for religious beliefs, signed by its chairman, Vladimir Lenin. The decree stated that “a person who is not able to participate in the military service because of his religious convictions should be given, by a decision of the People’s Court, the right for the duration of the [compulsory] service to serve as a hospital orderly, mainly in infectious hospitals, or other suitable and socially-useful occupations, to be selected by the conscript himself”.

In addition the decree set out the procedure for review of applications of conscientious objectors and for granting alternative civilian service. It stated that the People’s Court should request a special expert investigation from the Moscow United Soviet of the Religious Communities and Groups on every single case of conscientious objection, before deciding to grant alternative civilian service. “The expert investigation should cover not only the fact that a particular religious conviction excludes participation in military service, but also the degree to which the particular person acts sincerely and consistently,” the decree read.

Lastly, the decree provided for a total exemption from military service without substituting it with an alternative civilian one in cases where it could be well established that it was impossible for the person to serve the alternative service as well because of his “religious convictions in general, as well as the ... personal life of the particular individual”. The idea for issuing this decree allegedly belonged to Lenin. During the debates around the draft decree, he explained the need of such piece of legislation in this way: “I am convinced that this Decree will not be used for long. Time will pass, people will calm down when they see that the Red Army is not using violence anymore... We need to adopt this Decree in the interim period in order to calm and satisfy those who have already survived the horrible persecutions and sufferings by the Tsar’s government”.

The implementation of the Decree by the Soviet authorities was extremely difficult. The majority of the local military authorities either did not learn about the existence of the Decree or decided to ignore it. As a result a number of cases of alleged ill-treatment and torture of conscientious objectors took place. Often conscientious objectors were charged and tried in military courts instead of civilian ones and many

¹See Bruno Coppiters, “Conscientious Objection to Military Service”, *Chelovek*, 5/90

received the death penalty. Despite the protest by the United Soviet of the Religious Communities and Groups and the order for release by the Moscow authorities, seven conscientious objectors were executed in 1919 in Smolensk. A number of conscientious objectors were extrajudicially executed on the orders of local authorities. Nevertheless, over the two years, 1919 and 1920, about 8,000 conscientious objectors were officially exempted from compulsory military service under the provisions of the decree.

In 1922 the United Soviet of the Religious Communities and Groups was dissolved. An order of the People's Commissariat of Justice and the Supreme Court of 5 January 1923 defined the list of religious groups whose members had the right to conscientious objection. The decree existed in practice until 1926. On 13 August 1930 a law on military service was adopted which granted the right to conscientious objection and alternative civilian service to members of religious groups only in peace time. In time of war the religious conscientious objectors were obliged to serve in unarmed military units.

On 1 September 1939 Stalin's government adopted a new law "On universal military service", which abolished the right to conscientious objection to military service and introduced a compulsory service for all. The explanation which the authorities gave was that there had not been any applications by conscientious objectors in the previous several years. In fact the number of people not wishing, because of their convictions, to use weapons did not decline.

The principles outlined in this law have ruled the country's military practice for more than half a century. They continue to be practised and defended at present by a large group of military and civilian officials in Russia, as well as members of the judiciary and law enforcement officers, although now they violate the first and most important Russian document: the Constitution.

Violation of Article 59 of the Russian Constitution. Draft Law on alternative service.

Conscientious objection to military service is recognized by the United Nations Commission on Human Rights (Resolution 1989/59, and reaffirmed in Resolution 1993/84 of 10 March 1993) as a legitimate exercise of the right to freedom of thought, conscience and religion, a right guaranteed under Article 18 of the International Covenant on Civil and Political Rights (ICCPR). This right is also recognized in the Russian Constitution, where it has been enshrined since April 1992.

However, almost five years later parliament has still not introduced the necessary enabling legislation, or amended the Criminal Code to reflect this constitutional provision, and young men continue to risk imprisonment for refusing military service on conscientious grounds. An attempt on 8 December 1995 to pass a law on alternative service resulted in the majority of deputies in the State Duma voting against it. However, a law could be implemented by Presidential decree. The accession of Russia to the Council of Europe in

"the right of everyone to have conscientious objections to military service [is recognized] as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in Article 18 of the Universal Declaration of Human Rights"

United Nations Commission on Human Rights, 45th Session, 1989

Russia: the right to conscientious objection

"A citizen of the Russian Federation whose convictions or faith preclude the performance of military service...has the right to substitute it for an alternative civilian service."

Article 59, Constitution of the Russian Federation

February 1996 means that Russia should be working towards that body's Recommendation No. R (87) 8 Regarding Conscientious Objection to Compulsory Military Service. This recommends that the governments of member states, insofar as they have not already done so, bring their national law and practice into line with a basic principle. This basic principle states: *"That anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms,*

shall have the right to be released from the obligation to perform such service... Such persons may be liable to perform alternative service." (For more on United Nations and European resolutions and recommendations on this matter, see also *Out of the margins: the right to conscientious objection to military service in Europe* - AI Index: EUR 01/02/97)

The courts' interpretation of the Constitution violates...the Constitution. Independence of the judiciary.

According to Article 15(1) of the Constitution, "[t]he Constitution of the Russian Federation has supreme legal force and is directly applicable". This means that it is not necessary for the courts to await the passage of legislation in order to execute new constitutional norms. They can resort directly to the Constitution and invoke its human rights provisions.

The provisions of Article 15(4) of the Russian Constitution allow for direct application of the norms of international law if the national law conflicts with them, (or if corresponding domestic laws have not been established). It states that "[g]enerally recognized principles and norms of international law and the international treaties of the Russian Federation are a constituent part of its legal system. If an international treaty of the Russian Federation establishes rules other than those stipulated by the law, the rules of the international treaty apply".²

On 31 October 1995 the Russian Supreme Court issued Decision No. 8, "On some questions relating to the implementation of the Constitution of the Russian Federation by the courts in the process of enforcing justice". This document provided the courts with specific guidelines for interpretation and enforcement of the constitutional norms and provisions. In paragraph 2(d) the Supreme Court ruled that a court of general jurisdiction is obliged to apply the constitutional norms directly in cases when "[t]he law or any other

²As a successor state of the Soviet Union, Russia assumed the responsibility of fulfilling the treaty obligations of the USSR. According to reports, the USSR was party to over 16,000 different treaties.

The Deputy Head of the State Duma's Committee on Law and Judicial and Legal Reform, Yury Ivanov, told the Committee against Torture on 12 November 1996 during the review of Russia's Second Periodic Report:

"Maybe you are not sufficiently aware of the difficult and acrimonious situation in the Russian parliament as regards the implementation of international standards in Russian legislation. You were all very categorical in your concern - very understandable concern - to ensure that international standards stand over and above domestic legislation. This is a position which not everyone in Russia shares and I think that it would be a very good idea if this were taken into account, in particular as regards certain amendments to specific pieces of Russian legislation. Unfortunately I cannot cite any cases of a particular court applying international standards - within the context of domestic legislation yes, but directly no, not so far".

ous objection

5

normative act...contradicts the Constitution of the Russian Federation and the relevant federal law, which has to govern the specific judicial relations...is absent". In addition, in paragraph 5, the Supreme Court instructed the courts that if the provisions of the international laws and treaties to which Russia is party contradict the provisions of the domestic laws, the courts have to apply the international legal norms, as provided for in Article 15(4) of the Constitution. The Supreme Court also clarified the interpretation of the "principles and norms of international law" as any "international covenant, convention and other documents (in particular, the Universal Declaration of Human Rights, ICCPR...)".

Nevertheless, the practice of the courts tells a different story. In some instances individual judges have decided to use the provisions of Article 59 of the Constitution directly and dismiss the criminal charges brought against a

conscientious objector on the grounds that they violate the Constitution. In most of the other cases, however, conscientious objectors continue to face conviction and imprisonment.

Similarly, the constitutional principle of international instruments taking precedence over the rules of internal laws, is in practice, rarely exercised by the courts of general jurisdiction and depends on the interpretation given to it by individual judges.

An example of this practice is the case of **Aleksandr Seryogin**. On 25 October 1996 he was reportedly convicted of draft dodging by the Moscow Sevastopol District Court, for trying to exercise his constitutional right to alternative service. Aleksandr Seryogin was given a two-year suspended sentence for evading military service. It was reported that he announced his intention to perform alternative service in March 1996 to the Recruitment Commission of the Sevastopol district in Moscow. He reportedly stated: "I made this decision at 16. With all the changes in the country, I realized that I personally could not serve in the army". The judge in this case, Ivan Ivanov, rejected Aleksandr Seryogin's defence and allegedly said: "If Seryogin were charged a second time and ended up in my court, I would throw the book at him". It was reported that when the judge was asked if the verdict of the case indicates that Article 59(3) of the Constitution was not in force, Ivan Ivanov allegedly replied: "That's right, it is not in force". However, the judge based his ruling on the wording of Article 59 of the Constitution which states that alternative service is available to conscripts if their convictions, religious beliefs, or "other cases established by Federal law" render military service impossible. Judge Ivanov reportedly argued that no such law currently exists, as the President has not signed any such legislation.

Aleksandr Seryogin appealed the court's decision to the Moscow Regional Court. In a decision of 25 December 1996, the Collegium of the Moscow City Court reversed the

two-year prison sentence imposed on Aleksandr Seryogin by the district court. The decision by the Collegium of the Moscow City Court upheld Aleksandr Seryogin's right to perform alternative service as guaranteed by the 1993 Constitution of the Russian Federation.

In general, the institutionalization of procedures to safeguard internationally recognized human rights in Russia has been slow. Implementation of the constitutional provisions for due process, fair and timely trial, and humane punishment has made little progress. In addition the judiciary has often been subject to manipulation by political authorities and plagued by large case backlogs and trial delays. Lengthy pre-trial detention has remained a serious problem.

In June 1996 the All-Russian Council of Judges reportedly adopted a resolution expressing lack of confidence in Justice Minister Valentin Kovalev because courts had received less than one-fifth the sums required to cover administrative costs and other expenses. Some courts stopped hearing cases. In October the support staff in 17 of 19 St Petersburg courts went on strike because they had received no salary for over two months and only about one-quarter of their pay for the preceding eight months. Justice officials also are at risk physically; two were killed in 1996, and court personnel are routinely threatened. Court security is minimal due to a lack of funds.

In an unprecedented move, a decision was made by the Supreme Court of the Russian Federation in the first quarter of 1996, which states under point 11, that "***Refusal to carry out military service for religious convictions does not constitute a crime***". Several cases were reported where similar decisions were taken by courts of general jurisdiction.

Prosecution and imprisonment of conscientious objectors by the military authorities: prisoners of conscience

The Presidential Commission on Human Rights noted in its report published in February 1996³: "The Law on Alternative Service has never left the State Duma. The danger remains that persons who do not wish to perform military service for pacifist or other beliefs may be prosecuted. According to information from the Institute of Religion and

³See *On the Observance of the Rights of the Person and the Citizen in the Russian Federation (1994-1995)*, report of the Presidential Commission on Human Rights, February 1996.

Law, of the persons tried since 1993 for refusing military service, more than 700 were conscientious objectors". In addition the Presidential Commission on Human Rights, under its then chairman Sergey Kovalyov, stated that "the law has remained virtually unchanged, except that regulations governing the draft have been tightened and the period of military service extended, changes which have not won public approval".

Many matters of fundamental importance to the Russian army are still governed by administrative regulations and institutional orders and instructions, which are often secret and for internal use.

For example, there is the special instruction of the Office of the Procurator General of the Russian Federation, "On urgent measures regarding elimination of the violation of the laws in the process of conscription of citizens to the military service", whose existence was reported by human rights groups at the beginning of 1996. This document reportedly provided instructions to the military commissioners, the officials of the Ministry of Internal Affairs and the procurators, among others, to undertake urgent measures to tighten the draft procedure and to bring to justice the violators, that is, the draft evaders. The Instruction ordered the law enforcement officials to take "measures regarding the search for and the detention of citizens who have evaded the draft to the army and the military service".

Furthermore, the Instruction ordered the procurators to "review without delay and as provided for in Article 109 of the Code of Criminal Procedure of the Russian Federation, cases of persons who have evaded the draft to the military service, and to inform the military commissions about each case where a criminal case has been opened. Do not send the materials of the cases back to the military commissions for an additional investigation and instead, conduct an investigation into the case as provided for in the Code of Criminal Procedure". In addition, the Instruction ordered the military commissions to "react to each fact of a violation by the draftees" of the procedure for conscription to the military service.

There was no mention in the Instruction of the constitutional right to conscientious objection to military service.

The Organization of Soldiers' Mothers (a non-governmental organization) from the town of Chelyabinsk expressed concern in December 1995 that law enforcement officials had used the provisions of Presidential Decree No. 1226 on fighting organized crime of 14 June 1994 to detain conscientious objectors to military service. It was reported that officials of the Ministry of Internal Affairs have referred, on a number of occasions, to the provisions of Decree No. 1226 when conducting searches into the homes of conscientious objectors and detaining them, without a prior court order or a procurator's sanction.

The presidential decree, which is still in force, allows law enforcement authorities to detain persons suspected of ties to organized crime for up to 30 days without charge and without access to a lawyer. This conflicts with Article 22 of the Russian Constitution which stipulates that a person may not be held for more than 48 hours before a court rules on the legality of their detention. It violates Article 9 of the ICCPR. The presidential

decree also makes no mention of the right of the accused to access to a defence counsel during the period spent in detention.

Law enforcement authorities employ this decree extensively, especially towards ethnic minorities from the Caucasus. Criminal suspects, detained under the provisions of this decree and denied access to the outside world, are often subjected to torture and ill-treatment by the police, and the officers from the Department on Fighting Organized Crime (RUOP). (For more details on individual cases of torture and ill-treatment of suspects detained under the provisions of this decree, see *Torture in Russia: "This man-made Hell"*, AI Index: EUR 46/04/97).

A number of cases of arrest and imprisonment of conscientious objectors by the Russian authorities have been brought to the attention of Amnesty International. The organization considers those imprisoned to be prisoners of conscience. A few examples follow. The information given about these cases here is the latest available to Amnesty International at the time of writing.

In June 1996 Amnesty International called on the Russian President to implement by presidential decree a law guaranteeing in practice the right to conscientious objection and the right to alternative civilian service as, enshrined in Article 59 of the Constitution, and thereby eradicate the practice of imprisoning conscientious objectors.

In 1994 one young man imprisoned for seeking to exercise his right to conscientious objection on religious grounds was **Lev Sobolyev**, a Jehovah's Witness who was given a one-year sentence for "evading regular call-up to active military service" (Article 80 of the Russian Criminal Code). He had been found medically fit for service in 1992, but had refused to appear at the conscription point and was subsequently given an 18-month sentence, suspended for one year, under Article 80. The sentence was lifted on 13 May 1994 under the terms of an amnesty, but Lev Sobolyev was prosecuted again after he was sent further call-up papers and once more refused them. He was sentenced by Vologda City Court on 3 November 1994 to one year's imprisonment, but released on 29 November that year on the orders of the higher Vologda Regional Court.

In December 1995 in front of the draft committee of the Verkh-Issetkiy District of Yekaterinburg Region, **Denis Yazykov**, publicly stated his conscientious objection to military service and requested the right to perform alternative civilian service as stated in Article 59(3) of the Constitution. His request was refused. Denis Yazykov then appealed against this decision to the court. In February 1996, the District Procurator opened criminal proceedings against him according to Article 80 of the Russian Criminal Code - "evading regular call up to active military service." On the morning of 30 May 1996, unidentified police officers reportedly broke into Denis Yazykov's home and arrested him. He was reportedly held in custody until the evening when he was released on bail. The charges against him, however, have not been dropped. Amnesty International was informed that on 23 October 1996 Denis Yazykov's case was returned for further investigation by the Verkh-Issetkiy District Court of Yekaterinburg Region.

Vadim Hesse, aged 18, was arrested on 25 January 1996 for refusing call-up for military service, having attempted the previous month to register his conscientious objection and request to perform alternative service. He was charged with "evading regular call-up to active military service" (Article 80 of the Criminal Code) Russian Federation. On 5 December 1995 Vadim Hesse had submitted his appeal requesting to change his military service to alternative civilian service to the Military Recruitment Office of Noginsk district, Moscow Region. The district military commissioner allegedly accepted Vadim Hesse's appeal, but nevertheless issued him with a call-up paper for 15 January 1996 to be conscripted for military service. Vadim Hesse refused to present himself at the conscription point. On 25 January 1996 the Noginsk District Court heard Vadim Hesse's appeal against his conscription order. He was arrested at 6pm the same day in his apartment by police officers. Once in the police station, he was shown the warrant for arrest issued by the prosecutor of Noginsk District. Amnesty International considered him a prisoner of conscience and called for his immediate and unconditional release. He was released from prison in mid-March. Furthermore, Amnesty International received notification in April 1996 from the President's representative to the Constitutional Court that Vadim Hesse's case would be reviewed by the Office of the Procurator General, and that the State Duma (the lower house of parliament) was looking into a draft law on alternative service. He was subsequently acquitted by Noginsk City Court in May, and by Moscow Regional Court in June.

Amnesty International also approached the authorities about the case of **Pyotr Gusev**. He reportedly expressed his wish to serve an alternative service in the spring of 1996, when he received his call-up papers from the drafting committee. On 31 October 1996 the Perovskovo District Court of Moscow reportedly ruled against Pyotr Gusev's appeal to be allowed to perform an alternative civilian service.

Uvanchaa Dozur-ool Mongushevich, a 22-year-old novice monk at the Religious Buddhist community "Kuntsechoinei Datsan" at the Gelugpa Buddhist Church in St Petersburg, faced up to seven years' imprisonment as a prisoner of conscience when the Russian authorities failed to recognize his right to conscientiously object to military service. Uvanchaa Dozur-ool Mongushevich, from the Republic of Tuva, was drafted in the army in 1995, despite the fact that he was preparing to be initiated as a monk. He was sent to serve in the military unit in the village of Pereyaslavka, Khabarovsk region. There he was allegedly ill-treated by his fellow soldiers, and as a result of severe beatings, he was reportedly hospitalized with both legs broken. After treatment he was taken home by his parents. Soon afterwards he returned to the Buddhist monastery, where he was arrested on 26 May 1996 by the military authorities. He was charged on 13 June 1996 under Article 246 of the Russian Criminal Code with "voluntary desertion of his army unit" and was held in a pre-trial detention centre (SIZO) in St Petersburg.

Uvanchaa Dozur-ool Mongushevich has reportedly stated his conscientious objection to compulsory military service, based on his religious beliefs and religious affiliation, all along - when he was drafted into the army; when he left the army unit after

his alleged ill-treatment; at the time of his arrest and during the investigation concerning his current criminal charges. His spiritual teacher, Lama Djampa Donyod Badmaev, received a letter dated 28 June 1996 from the Office of the Chief Military Procurator of the Russian Federation, which acknowledged the fact that Uvanchaa Dozur-ool Mongushevich had stated his objection based on his religious beliefs.

On 28 June 1996 the St Petersburg Military procurator decided to close the case against Uvanchaa Dozur-ool Mongushevich due to "change in circumstance". The procurator ruled that he should no longer be detained, but sent to the Military recruitment office in the republic of Tuva, in order to be dismissed from military service. This decision was upheld on 18 July by the Military Procurator of Moscow.

However, according to information received from the deputy Military procurator of Khabarovsk, Uvanchaa Dozur-ool Mongushevich was returned from the Investigation prison in St Petersburg, where he had been detained, to his original military unit in Khabarovsk and was forced to remain in the army. It was said in August 1996 that the criminal charges against him were being examined by the military procurator of the Krasnorechensky region. However, in a letter of 12 September 1996 sent to Amnesty International by the Office of the Military Procurator of the Russian Federation, V. G. Kasyanchik, a military procurator, stated that the "criminal charges against Uvanchaa Dozur-ool Mongushevich have been dropped in view of his religious beliefs." The letter claimed that "a decision has been taken to release him from detention and the order for his release has been sent to the relevant authorities." However, there was no mention in the letters that Uvanchaa Dozur-ool Mongushevich's conscientious objection to military service would be acknowledged by the authorities and that he would be released from serving in the army.

Sergey Mikhailovich Rozhkov informed the Recruitment Commission of the Murmansk Region on 9 October 1996 that he was a Jehovah's Witness and that he wished to serve an alternative to military service. The Recruitment Commission reportedly refused to accept this statement. On 25 December 1996 Sergey was taken out of a mathematics class from his school in the village of Revda in the Murmansk Region by two police officers, who took him to the Recruitment Commission and then to the collection point for those about to serve their military service. Sergey was detained overnight in a cell before being sent to the military camp at Novaya Zemlya, an island in the Kara Sea off Russia's north coast. Sergey Rozhkov repeatedly stated his religious grounds for objecting to military service and requested to be allowed to perform alternative service. He asked to talk to the military procurator but this was not permitted.

A local non-governmental organization, the Committee of Soldiers' Mothers' in Murmansk, contacted the head of the Regional Military Committee who said that he was authorized to ensure Sergey Rozhkov served his military service. They also contacted the regional procurator who said that he could not intervene on behalf of Sergey Rozhkov with the Military Committee. By the time a representative of the Committee of Soldiers'

Mothers tried to file a request with the Head of the Military Committee, she was told that Sergey Rozhkov had already been sent to Novaya Zemlya military camp.

On 12 February 1997, Amnesty International learnt from the Murmansk Committee of Soldiers' Mothers that Sergey Rozhkov had been transferred back to a military unit in Severomorsk, in Murmansk Region. In a letter written on 9 February he reported, "*Here I am washing floors, shovelling snow. Although I was not present at the proceedings of taking the oath [of allegiance to the army] in my military card it is written that I took the oath on 2 February. Honestly, I don't know what I'm doing back here again - they say I'll be serving here.*"

Prior to this the Military Committee had tried, unsuccessfully, to enforce the conscription of conscientious objectors through the courts. In July 1995 it brought criminal proceedings against conscientious objectors, Oleg Mikhailov, and four others Nikiforov, Loban, Agayev, and Gorkovets. However, the Military Court of Severomorsk Garrison ruled that they had the right to serve an alternative service instead, and found the defendants not guilty. The above mentioned decision of the Supreme Court of the Russian Federation of early 1996 provides that, "*A citizen of the Russian Federation whose convictions or faith preclude the performance of military service... has the right to substitute it with an alternative service*".

Amnesty International was concerned that the action of forcibly taking Sergey Rozhkov to the military camp may have been a way for the Military Committee to avoid fighting the case through the courts, which, in the light of the above, they feared they might lose.

The armed conflict in Chechnya: conscientious objection, desertion, POW-exchange and amnesty

In the context of the conflict in the Chechen Republic the issue of conscientious objection focused not only on the refusal of call-up papers, but on the desertion of a number of serving conscripts to avoid involvement, or further participation in, the fighting. Resolution 1993/84 of the UN Commission on Human Rights recommends that states ensure that "all relevant persons affected by military service" should have information available to them about the right to conscientious objection and how to apply for an alternative service. In line with this Amnesty International believes that the right to exercise a conscientious objection to military service applies not only at the point of call-up, but extends also to cover those who develop such objections while actually performing military service. Amnesty International believes they too should be granted the right to register their conscientious objection, and the right to transfer from military to an alternative civilian service.

In the absence of any such alternative service, or any procedure for serving soldiers to register an objection, many young men whose conscientiously held beliefs precluded their participation in the conflict over the Chechen Republic have apparently felt that the only way they could remove themselves from this moral dilemma was by deserting from

the armed forces. One such example is that of two Russian marines who deserted their unit in March 1995 and sought asylum in the neighbouring Baltic state of Lithuania, reportedly on the grounds that they were not willing to participate in military operations against the Chechen people.

Aleksandr Vasilkov and **Ruslan Kurdyukov**, were both aged 18 and sailors in the Baltic fleet. They left their unit in the Kaliningrad Region of Russia on 19 March 1995 and were detained on 25 March in Lithuania, in the suburbs of the capital, Vilnius, at Paneriai railway station. They requested asylum and were reportedly granted temporary permission to stay while the Lithuanian authorities examined their situation. However the Russian authorities pressed for them to be handed over without delay, and on 4 April 1995 the two men were delivered to representatives of the Russian embassy in Vilnius. From there they were taken back to Kaliningrad.

Amnesty International does not know whether any charge or charges were brought against them. At least 11 criminal cases were opened against officers (as opposed to conscripts) who refused orders to go to the Chechen Republic, a Defence Ministry spokesman reported on 7 April 1995. Yevgeny Vystosky, head of the personnel department, told a news conference in 1995 that a total of 567 officers had refused such orders.

Amnesty International urged the Russian authorities not to prosecute Aleksandr Vasilkov and Ruslan Kurdyukov, or any others in a similar position, for their refusal on conscientious grounds to perform military service. The organization also approached the Lithuanian authorities over their return of the two men, seeking further information on what procedures, if any, were invoked to hear the request for asylum; which body was responsible for making the decision; whether Aleksandr Vasilkov and Ruslan Kurdyukov had access to the UN High Commission for Refugees (UNHCR) as well as to legal advice and materials in their own language in order to pursue their asylum request; and what opportunities the two men were afforded to appeal against the decision to return them to Russia.

In August 1996 a peace agreement between the Russian and the Chechen side ended the combat operations in Chechnya and set up a plan for withdrawal of the Russian federal troops. Throughout 1996 many conscripts continued to desert their units and to go into hiding either to avoid further participation in the fighting or to avoid being sent to Chechnya.

For desertion during combat operations the law provides for severe punishments. During the armed conflict there were credible reports coming from the war zone in Chechnya about alleged mass extrajudicial executions of groups of deserters by the Russian military authorities. According to reports, in some incidents, a group of deserting soldiers were shot by fellow soldiers from a low-flying helicopter. Such incidents were reported by members of the Organization of North Caucasian Women and the Soldiers' Mothers Organization of St Petersburg in 1996. None of these incidents are known to have been investigated by the authorities.

On 12 March 1997 an amnesty law relating to the armed conflict in the Chechen Republic (which had been prepared by a group of Duma deputies) was adopted by the Russian parliament. According to the law, the amnesty applies mainly to Russian servicemen from the federal forces who took part in the Chechen conflict. Excluded from the amnesty are those convicted under a number of articles of the (old) Russian Criminal Code, including Article 77 (banditry) and Article 103 (pre-meditated murder or bodily harm). However any Chechen who allegedly took part in an armed opposition group could face charges under Article 208 (organization of or participation in an illegal armed formation) and Article 209 (banditry) of the new Russian Criminal Code, and any member of such groups who took part in the fighting during the conflict may be charged under Article 105 (pre-meditated murder) or others, including illegal possession of weapons.

It has been argued that the amnesty law could create serious obstacles for the for the process of the exchange of prisoners of war and those detained on both sides. According to reports in January 1997, there were 1,058 Russian soldiers and officers still detained by Chechen fighters who were willing to release them in exchange for members of Chechen armed groups currently detained by the Russian authorities on criminal charges.

Excluded from the amnesty, according to the law, are persons charged under articles of the Russian Criminal Code relating to treason, espionage and terrorism, which casts serious doubt on the procedure for resolving cases of servicemen who evaded service in Chechnya, including cases of desertion from the Russian armed forces during combat operations and cases of conscientious objection to military service to avoid participation in armed conflict.

The Russian human rights group Memorial, supported by the Committee of Soldiers' Mothers and individual families of Russian soldiers detained in Chechnya, has called for the revision of the amnesty law which could endanger the life and safety of those still detained and would put on hold the process of exchange of prisoners of war. Members of Memorial have prepared and offered for discussion a draft of an alternative law on amnesty.

The Deputy Procurator General of the Russian Federation provided the Committee against Torture on 12 November 1996 with official information about prosecutions of alleged perpetrators in the context of the conflict in the Chechen Republic:

“In the period from January to August 1996 the Military Procurator’s Office has taken up 1,415 criminal cases, of which about 400 were referred to the courts and criminal proceedings instituted. Moreover, investigations were conducted into 65 other cases where criminal proceedings would have been instituted, but the cases were dropped as part of the amnesty to mark the anniversary of our victory in the Great Patriotic War. Of the criminal cases prosecuted 39 were premeditated murders, seven were severe physical suffering, 58 were violations of regulations on the use or carrying of weapons, 54 related to the misuse of weapons, 16 concerned violations by

officers on soldiers, cases of what is known as *dedovshchina* - and there were other cases concerning the misuse of transport etc. Over the same period criminal proceedings were instituted in 45 cases of attacks on the local population. Of these 17 were found to be premeditated murders, five cases of severe physical suffering being inflicted, six cases of robbery and plundering etc. Since the creation of the Military Procurator's Office in Chechnya a total of 1,115 individuals [military personnel] have had criminal charges brought against them and of those only 367 were referred to the courts, of whom 220 have been sentenced".

While giving statistics about cases under consideration by the authorities in the context of the conflict in the Chechen Republic and information of prosecutions of army personnel for *dedovshchina*, the Russian Government delegation did not provide any clear indication of how many members of the internal troops and regular military personnel have been investigated and prosecuted for the use of torture and ill-treatment toward detainees, including those held in "filtration camps" during the conflict. Nor did it provide specific information about prosecutions of cases of desertion or conscientious objection during the conflict. No mention was made of the alleged extrajudicial executions of deserters reportedly carried out by members of the military in Chechnya.

The new Criminal Code of the Chechen Republic⁴, introduced by a Presidential decree in the end of 1996, is a legal document which introduces the rules and regulations of the Islamic religious tradition, the so-called *Shari'a* law, into the judicial practice of the republic⁵. While the question of implementing the new Criminal Code has yet to be settled in law or practice, Amnesty International is deeply concerned about the large number of provisions in the Code with punishments which violate the prohibition of torture and ill-treatment, such as a variety of corporal punishments, including amputations and canning, and the number of offences which carry the death penalty.

In addition, Article 54 of the Code provides for up to seven years' imprisonment for "allowing or helping the escape of prisoners of war". This provision of the Code applies to any person who allows the escape of a prisoner of war while guarding him, or any other person who helps organize the escape or provides the escaped person with refuge.

Further the Code criminalizes acts such as "incitement for desertion from the military service and providing refuge to a deserter" (Article 59) and provides for up to five years' imprisonment. Article 62 of the Code also prescribes a punishment of up to five years' imprisonment for "incitement of discontent among the members of the regular forces and incitement of actions leading to violation of the order".

Amnesty International is concerned that the broad wording of Article 59 and Article 62 may allow for their misuse by military and law enforcement officials to detain people

⁴Published in the Chechen capital, Grozny, on 6 September 1996 by the newspaper *Ichkeriya*.

⁵For more details see, *Torture in Russia: "This man-made Hell,"* AI Index: EUR 46/04/97.

solely for the peaceful exercise of their right to freedom of expression and for stating their objection to military service on the grounds of their conscientiously held beliefs.

Failure of the authorities under the international human rights standards

The Human Rights Committee in July 1995 expressed concern to the Russian Government in paragraph 21 of its Comments⁶ that:

“Conscientious objection to military service, although recognized under article 59 of the Constitution, is not a practical option under Russian law and takes note in this regard of the draft law on alternative service before the Federal Assembly. It expresses its concern at the possibility that such alternative service may be made punitive, either in nature or in length of service. The Committee is also seriously concerned at the allegations of widespread cruelty and ill-treatment of young conscript-soldiers”.

Furthermore, the Committee urged the Russian Government in paragraph 39 that:

“stringent measures be adopted to ensure an immediate end to mistreatment and abuse of army recruits by their officers and fellow soldiers. It further recommends that every effort be made to ensure that reasonable alternatives to military service be made available that are not punitive in nature or in length of service. It urges that all charges brought against conscientious objectors to military service be dropped”.

In its Recommendation No. R (87) 8 to all members states, issued in April 1987, the Committee of Ministers of the Council of Europe have also supported the right to conscientious objection. This text underlines the basic principle that “anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service...” The 1987 Recommendation also urges that “...the governments of member states, insofar as they have not already done so, bring their national law and practice into line...” with this basic principle.

Russia became a member of the Council of Europe on 28 February 1996. Among the various commitments given by the Russian Government to the Council of Europe upon its

⁶See *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Comments of the Human Rights Committee, Russian Federation*, UN Doc. CCPR/C/79/Add.54, 26 July 1995.

accession were: “to adopt a law on alternative military service, as foreseen in Article 59 of the Constitution.”⁷

Recommendations to the Russian military and government authorities

Conscientious objection to military service has been recognized by the **United Nations Commission on Human Rights** as “a legitimate exercise of the right to freedom of thought, conscience and religion” (**Resolution 1987/46**). This definition has been reaffirmed in subsequent resolutions adopted by the Commission in 1989, 1993, and 1995.

The **Commission’s 1995 Resolution (1995/83)** appeals to all UN member states “...if they have not already done so, to enact legislation and to take measures aimed at exemption from military service on the basis of a genuinely held conscientious objection to armed service.”

The right to conscientious objection is also recognized in the Russian Constitution, where it has been enshrined since April 1992.

The right to refuse to perform military service for reasons of conscience is inherent in the notion of freedom of thought, conscience and religion as recognized in **Article 18** of the **Universal Declaration of Human Rights**. This freedom is also articulated in **Article 18** of the **International Covenant on Civil and Political Rights** and **Article 9** of the **European Convention for the Protection of Human Rights and Fundamental Freedoms**.

In its **General Comment Number 22 (48)** concerning **Article 18 of the International Covenant on Civil and Political Rights**, adopted by the **United Nations Human Rights Committee** in July 1993, the Committee concurred with the Commission’s view and stated its belief “...that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief.”

At the European level, the **Committee of Ministers of the Council of Europe** have also supported this definition in their **Recommendation No. R (87) 8** to all member states - issued in April 1987. This text underlines the basic principle that “anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service...” The 1987 Recommendation also urges that “...the governments of members states, insofar as they have not already done so, bring their national law and practice into line...” with this basic principle.

Amnesty International recognizes the problems that may exist within the system of the armed forces, for example those caused by lack of funding, training, infrastructure and the transitional

⁷See Parliamentary Assembly’s *Opinion No. 193(1996) on Russia’s request for membership of the Council of Europe*, paragraph 10(18) and (19).

period for the Russian legal and judicial reform. However, these problems can never be used as an excuse for restricting the right to conscientious objection and imprisonment of conscientious objectors. Amnesty International calls on the authorities to respect the right of conscientious objection to compulsory military service as guaranteed in the Constitution and international standards.

Amnesty International recommends that the authorities as a matter of priority:

- respect the constitutional right to conscientious objection and enact legislation creating alternative civilian service of non-punitive length;
- release all prisoners who were convicted solely for exercising their right to conscientious objection;
- take urgent measures to implement the constitutional provisions on the right to conscientious objection as provided for in Article 59 of the Constitution into the practice of the courts at all levels;
- inform the military authorities involved in conscription of the precedence of the constitutional provisions and the provisions of international standards over the internal rules and regulations, local decrees and institutional instructions, governing their activities;
- abolish all federal, local or institutional acts, rules and regulations relating to the activities of the armed forces, which violate the Constitution and international standards on the right to conscientious objection.